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E.O. 12958: N/A

TAGS: KPKO PREL KE KTIA

SUBJECT: USUN INSTRUCTION TO EXECUTE 607 AGREEMENT WITH UN

REF: 09 STATE 014022

¶1. (U) This is an action request. USUN is instructed to execute immediately on behalf of the United States the agreement under Section 607 of the Foreign Assistance Act between the United States and the United Nations Organization Concerning the Provision of Services and Commodities on a Reimbursable Basis in Support of the Operations of the African Union Mission in Somalia. USUN is requested to, through either the US Permanent Representative to the UN or US Deputy Permanent Representative to the UN, sign this Agreement between the United States and the United Nations Organization.

TEXT OF AGREEMENT:

AGREEMENT BETWEEN
THE UNITED STATES OF AMERICA
AND
THE UNITED NATIONS ORGANIZATION
CONCERNING
THE PROVISION OF SERVICES AND COMMODITIES ON A REIMBURSABLE
BASIS IN SUPPORT OF THE OPERATIONS OF THE AFRICAN UNION
MISSION IN SOMALIA

PREAMBLE

The United States of America and the United Nations Organization, hereinafter referred to as the &Parties,⁸

On the part of the United States of America, as represented by the Department of State of the United States of America (hereinafter &Department of State⁸), acting under the authority of section 607 of the Foreign Assistance Act of 1961, as amended, and other relevant authority;

On the part of the United Nations Organization, as represented by the Department of Field Support, in accordance with United Nations Financial Regulations and Rules, and other relevant authority;

Noting United Nations Security Council Resolutions 1772 (2007), 1744 (2007), 1863 (2009) and, most recently, 1872 (2009) wherein the Security Council expressed its intent to establish a United Nations Peacekeeping Operation in Somalia as a follow-on force to the African Union Mission in Somalia (AMISOM), subject to further decision of the Security Council which would take into account inter alia the conditions set out in the Secretary-General's report S/2009/210; further requesting the Secretary General, in order to prepare for such an action, to provide a United Nations logistical support package to AMISOM, including equipment and services;

Desiring to establish the terms and conditions for the provision of assistance by the United States of America at the request of the United Nations Organization to provide logistical support for AMISOM, consistent with the support

outlined in UNSCR 1863, with all the costs for United Nations Organization requested assistance to be reimbursed to the Department of State by the United Nations Organization;

Have agreed as follows:

ARTICLE I SCOPE OF PROVISION OF SUPPORT

11. In order to assist the United Nations Organization with provision of the logistical support to AMISOM and in accordance with the terms of this Agreement, the Department of State, at the written request of the United Nations Organization, may provide to United Nations Organization the following types of assistance, to the extent they are available, relating to or in support of AMISOM on a reimbursable basis:

(a) The services and assistance required for logistics and equipment support for AMISOM, to include the provision of airlift support, maintenance and repairs for vehicles and equipment, renovation work for AMISOM facilities, electrical wiring for basecamps, medical evacuations, rations, fuel, lubricants, hygienic materials, firewood, charcoal, office supplies, deployment equipment, spare parts, FM transmitter equipment, and water purification chemicals consistent with the relevant task order Somalia Peacekeeping Operations: African Union Logistics Support of the Department of State Africa Peacekeeping contract between Department of State and DynCorp (hereinafter &the Contract⁸) subject to available funds .

(b) Other, similar types of support services as required and agreed upon in writing by the Parties.

(c) Requests and reimbursement for the services above shall not exceed \$35 million, unless agreed upon in writing by both parties.

12. The services to be provided under subsection 1.(a) above shall be in accordance with the Somalia Peacekeeping Operations: African Union Logistics Support Scope of Work and the associated cost proposals entitled &Revision #11: Updated Aircraft Costs,⁸ dated June 8, 2009, issued pursuant to and in accordance with the Contract and incorporated by reference herein, unless otherwise agreed in writing. Services provided under subsection 1.(b) above shall be performed in accordance with the Contract. The Department of State shall enforce the provisions of the Contract at the written request of the United Nations Organization so that the assistance provided pursuant to this Agreement shall be of equal quality and caliber to that which the Department of State is entitled pursuant to the Contract.

13. The United Nations may request termination of the provision of specific goods and services provided under subsection 1.(a) above with thirty days written notification to the representative designated by the United States. The notice period for termination of specific goods or services provided under subsection 1.(b) above shall be agreed in writing between the Parties on a case-by-case basis.

ARTICLE II SUPPORT PROCEDURES AND REQUIREMENTS

11. Unless the written consent of the United States of America has first been obtained which shall not be unreasonably withheld, the United Nations Organization shall not use or permit the use of any assistance provided pursuant to this Agreement for purposes other than to support AMISOM under applicable United Nations Security Council resolutions or for other purposes as may be agreed between the Parties consistent with this Agreement, or transfer or permit any officer, employee, or agent of the United Nations Organization to transfer any assistance provided pursuant to this Agreement, by gift, sale, or otherwise except as authorized pursuant to this Agreement and by the United

Nations Financial Regulations and Rules.

¶12. The Parties agree that the authorized users of any assistance provided pursuant to this Agreement shall include all United Nations and African Union personnel (including contractors) providing support to AMISOM and all authorized AMISOM personnel.

¶13. The United Nations Organization shall maintain the security, to the extent of its capacity, of any assistance provided pursuant to this Agreement, and shall provide it substantially the same degree of security protection afforded by the United States of America.

¶14. The provision of assistance pursuant to this Agreement may be made subject to additional terms and conditions as may be agreed to in individual implementing arrangements executed in writing between the United States of America, or the Department of State, and the United Nations Organization under this Agreement.

¶15. The Department of State and the United Nations Organization each waives all claims it may have (other than claims associated with the reimbursement for assistance provided hereunder) against the other Party for damage to, or loss or destruction of, its property or injury or death to its personnel arising out of activities of the personnel of the other Party pursuant to this Agreement. Claims of third parties filed against the Department of State or the United Nations Organization for damages or loss caused by their respective personnel, servants, agents or contractors, (including subcontractors) arising from activities under this Agreement shall be resolved by the Party against which such claims are filed in accordance with that Party's applicable laws, rules and regulations.

ARTICLE III IMPLEMENTATION

¶11. The Department of State shall implement this Agreement for the United States of America. The Department of Field Support shall implement this Agreement for the United Nations Organization.

¶12. The Department of State and the United Nations Organization shall each designate a representative to coordinate United Nations Organization requests for and the provision by or on behalf of the Department of State of the services as well as requests to terminate the provision of specific goods and services under this Agreement.

ARTICLE IV REIMBURSEMENT PROCEDURES

¶11. All assistance requested by the United Nations Organization and provided by the United States of America under this Agreement shall be fully reimbursed by the United Nations Organization within the time specified in paragraph 3 of this Article.

¶12. The cost to be reimbursed by the United Nations Organization shall not exceed the actual cost incurred by the Department of State in providing such assistance. In the event that the Department of State recovers funds from its contractors or any sub-contractor due to overcharging of contracts, or otherwise, the Department of State shall refund to the United Nations Organization any amounts so recoverable are attributable to payments made by the United Nations Organization hereunder.

¶13. The Department of State shall submit written invoices detailing the costs of assistance provided under this Agreement to the United Nations Organization. A consolidated Department of State invoice with supporting documentation shall be submitted on a monthly basis. The United Nations Organization shall pay submitted invoices in U.S. dollars to the Department of State within 60 days after receipt of the bills submitted pursuant to this Article.

ARTICLE V
ORDERING AND RECEIPT OF EQUIPMENT, SUPPLIES, AND SERVICES

¶1. The provision of assistance under Article I of this Agreement shall be accomplished under a Letter of Assist issued by an authorized United Nations Organization representative in accordance with United Nations procedures and consistent with the terms and conditions of this Agreement.

¶2. The Letter of Assist shall supply, as necessary, such additional details regarding, e.g., receipts, delivery procedures, and accounting shall be agreed upon by the Parties or their representatives in writing prior to the delivery of any assistance.

¶3. In the event of any conflict between the terms and conditions of this Agreement and any Letters of Assist or any other request issued by the United Nations, the terms of this Agreement shall be controlling.

ARTICLE VI
SETTLEMENT OF DISPUTES

Any dispute arising under this Agreement shall be resolved through consultations between the Parties to this Agreement or their representatives and shall not be referred to any third party.

ARTICLE VII
ENTRY INTO FORCE, DURATION, AMENDMENT AND TERMINATION

¶1. This Agreement shall enter into force upon signature and shall remain in force through October 30, 2009. This Agreement (other than paragraphs 1-4 of Article II) shall apply to assistance provided by the Department of State in accordance with Article I as of April 22, 2009.

¶2. This Agreement may be amended by the written agreement of the Parties and may be terminated by either Party upon 30 days written notification to the other Party.

¶3. Notwithstanding the termination of this Agreement, the obligations of the Parties in accordance with Article II and Article IV of this Agreement shall continue to apply, unless otherwise agreed in writing by the Parties.

DONE at , this day of , 2009,
in duplicate.

FOR THE UNITED STATES
OF AMERICA:

FOR THE UNITED NATIONS:

END TEXT OF AGREEMENT

¶2. (U) Formatted electronic text will be provided to USUN separately.

¶3. (U) Points of contact are: AF/RSA Colonel Michael Skardon, 202-647-7371, email address Skardonms@state.sgov.gov; IO/PSC Lieutenant Colonel Douglas J. Bell, 202-736-7737. Email address belldj@state.sgov.gov

¶4. (U) The U.S. signed original of the 607 Agreement, the Letter of Assist, and the agreement referred to in paragraph 2 above, should be sent to the Department (for the attention of Beverly Holman, L/T, Room 5420, HST Bldg.). A scanned

copy of the signed documents should also be emailed in PDF to
the Department to L/T, to the attention of Beverly Holman.
CLINTON